

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA, ) Case No. 5:20-cr-114-1  
Plaintiff, ) Cleveland, Ohio  
vs. ) Tuesday, May 24, 2022  
LARRIEN BROWN-AUSTIN, )  
Defendant. )

TRANSCRIPT OF SENTENCING PROCEEDINGS  
BEFORE THE HONORABLE PAMELA A. BARKER  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: Carol M. Skutnik  
*Assistant United States Attorney*

For the Defendant: Mark R. DeVan, *Esquire*

For Probation: Jennifer Deserto

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1 TUESDAY, MAY 24, 2022

2 - - -

3 (Proceedings commenced at 9:10 a.m.)

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5 THE COURT: We are on the record and here for  
6 sentencing in the matter captioned the United States of  
7 America versus Larrien Brown-Austin. This is case number  
8 5:20-cr-114. Present in the courtroom are the defendant,  
9 Larrien Brown-Austin; his counsel, Mr. Mark DeVan; Assistant  
10 United States Attorney Carol Skutnik; and our probation  
11 officer, Jennifer Deserto.

12 Is there anyone that's appearing or participating by  
13 telephone?

14 MS. SKUTNIK: If I may, Your Honor, Special  
15 Agent Stephanie Kochera from the FBI is participating  
16 online. I believe Victim Number 1 is online along with her  
17 therapist, Tony McKinley. And then there is also FBI Victim  
18 Assistant Deborah Hughes-Butts.

19 THE COURT: Thank you.

20 How about Victim 2?

21 MS. SKUTNIK: Not participating today.

22 THE COURT: All right. But she was notified  
23 of the date and time of the hearing, correct?

24 MS. SKUTNIK: She was, Your Honor.

25 THE COURT: All right. Thank you very much.

1 MS. SKUTNIK: And I'm not certain if Allison  
2 Kretz from my office, victim assistant, is also  
3 communicating or contacting us by video, but I better put  
4 that on the record too just in case I miss her.

5 THE COURT: Thank you.

6 And does Victim Number 1 intend to participate in the  
7 hearing by speaking today?

8 MS. SKUTNIK: She does not, Your Honor. She  
9 does not want to speak at all.

10 THE COURT: Thank you very much.

11 I have received and reviewed the presentence  
12 investigation report, the defendant's sentencing memorandum,  
13 the government's sentencing memorandum, a written statement  
14 by victim SD, who, through a licensed professional counselor  
15 and community director at a residential program for women  
16 who had been trafficked, requests criminal restitution in  
17 the amount of \$64,504 to \$71,056 for future sessions of eye  
18 movement desensitization and reprocessing, or EMDR, therapy  
19 and treatment for her substance abuse disorder to include  
20 medical-assisted treatment.

21 I have also received and read letters of  
22 recommendation from the defendant's family members.

23 Do the parties have any other documents or letters for  
24 the Court?

25 AUSA Skutnik?

1 MS. SKUTNIK: Nothing further, Your Honor.

2 THE COURT: Mr. DeVan?

3 MR. DEVAN: Nothing further, Judge.

4 THE COURT: Thank you.

5 Mr. DeVan, have you and your client read and discussed  
6 the presentence investigation report?

7 MR. DEVAN: We have, Your Honor.

8 THE COURT: Thank you.

9 And am I correct, Mr. DeVan, in stating that you filed  
10 two objections to the report?

11 MR. DEVAN: That is correct, Your Honor.

12 THE COURT: And as I read those, objection  
13 number 1, as outlined by the presentence report writer, sets  
14 forth your representations to the PSR that were provided to  
15 the probation officer dated April 13th, that, "Other than  
16 factual representations under the offense conduct portion of  
17 the PSR, paragraphs 9 through 35, 40 to 41, and defense  
18 behavior not part of relevant conduct, paragraph 66 to 76,  
19 the defendant has no objections to the guideline  
20 calculations or application of the Criminal Rule 11(c)(1)(C)  
21 plea agreement." Is that correct?

22 MR. DEVAN: That is correct, Judge.

23 THE COURT: And as I understand it from your  
24 sentencing memorandum, your client takes issue with respect  
25 to uncharged conduct or offense behavior not part of

1 relevant conduct, specifically defendant's behavior towards  
2 three additional women who provided statements alleging harm  
3 like that inflicted upon Victims 1 and 2 as outlined in  
4 paragraph 66 to 76 of the PSR.

5 And as I understand it from reading your sentencing  
6 memorandum, the defendant specifically denies that he was  
7 involved in physically restraining Individual Number 1 or  
8 injecting drugs into her or threatening to "dig a grave for  
9 her," and denies forcefully restraining Individual Number 2  
10 or physically assaulting Victim Number 3.

11 Do I have that correct?

12 MR. DEVAN: That is correct, Judge.

13 THE COURT: Thank you.

14 And did you review the response by Miss Deserto to  
15 your objection?

16 MR. DEVAN: I did.

17 THE COURT: And I do note that Miss Deserto  
18 advised that the defendant did not provide additional  
19 information for this portion of the report and did not  
20 provide any information or evidence of his own to contradict  
21 or disprove the conduct described in paragraphs 9 through  
22 35, 40 and 41, and 66 through 76.

23 Is that correct, Mr. DeVan?

24 MR. DEVAN: That's correct.

25 THE COURT: Does he plan to do so now?

1 MR. DEVAN: No.

2 THE COURT: All right. Are you expecting an  
3 evidentiary hearing with regard to objection number 1?

4 MR. DEVAN: No.

5 THE COURT: Thank you.

6 Would you like to elaborate on your objection  
7 number 1?

8 MR. DEVAN: No, Your Honor. Except to say  
9 that if -- that my client simply denies that he engaged in  
10 that sort of conduct as charged by these individuals who  
11 were not named in the indictment.

12 THE COURT: Thank you.

13 Probation Officer Deserto, any response, reply to  
14 Mr. DeVan?

15 MR. DESERTO: I have nothing to add besides  
16 what's in the addendum, Your Honor.

17 THE COURT: And, AUSA Skutnik, any response by  
18 the government?

19 MS. SKUTNIK: Your Honor, I would simply add,  
20 which is very similar to the response of Miss Deserto, is  
21 that one of the 3553(a) factors is that the Court consider  
22 the history and characteristics of the defendant. Much like  
23 the defendant in this case submitted a series of letters  
24 talking about how wonderful he is, we believe that this is  
25 appropriate information the Court may consider or may elect

1 to not consider, depending on what value the Court places on  
2 it, but certainly would submit that it is relevant  
3 information to consider his history and characteristics.

4 And we did address in our sentencing memorandum some  
5 of these statements, and what we also feel the significance  
6 of these statements are as it relates to the 11(c)(1)(C)  
7 plea agreement in this case.

8 But we do believe it should be within the universe of  
9 information the Court considers. Thank you.

10 THE COURT: All right. Thank you.

11 Certainly there's an 11(c)(1)(C) plea agreement,  
12 correct?

13 Both parties are urging this court to accept that plea  
14 agreement, and impose a sentence consistent therewith, which  
15 is the 180 months, is that correct, Mr. DeVan?

16 MR. DEVAN: That's correct, Judge.

17 THE COURT: Is that correct, AUSA Skutnik?

18 MS. SKUTNIK: It is, Your Honor.

19 THE COURT: Certainly I agree with  
20 Miss Skutnik to the extent that is information similar to  
21 what the defense provided and it just sort of can be  
22 considered, but in the end is of no moment if I accept the  
23 plea agreement.

24 Would you agree with that, Mr. DeVan?

25 MR. DEVAN: I would agree, Judge.

1 (Pause in the proceedings.)

2 MS. SKUTNIK: I have a text message from Agent  
3 Kochera saying, "I called in on phone, I still hear  
4 nothing."

5 COURTROOM DEPUTY: I apologize.

6 MS. SKUTNIK: Your Honor, I know that  
7 typically I would never have my phone next to me on the  
8 table, but I'm only using it to communicate with my case  
9 agent. Would the Court permit that for today's hearing?

10 THE COURT: Yes.

11 MS. SKUTNIK: Thank you.

12 THE COURT: We'll take a ten-minute break.

13 (Recess taken at 9:31 a.m.)

14 (Court resumes at 9:37 a.m.)

15 THE COURT: If I remember correctly, AUSA  
16 Skutnik, were you meaning to say something in response to  
17 Mr. DeVan?

18 MS. SKUTNIK: I was agreeing that in the end  
19 if the Court accepts the plea agreement, that the  
20 information from the other statements would -- as the Court  
21 said, of no moment.

22 THE COURT: All right. Thank you very much.

23 Now, Mr. DeVan, I do note that your objection number 2  
24 is an objection to the restitution request set forth in  
25 paragraph 136 of the PSR that was revised to include the



1 request for restitution of victim SD for between \$64,504 and  
2 \$71,056, is that correct?

3 MR. DEVAN: That is correct, Your Honor.

4 And, just to clarify, the original restitution request  
5 we do not object to, which was the -- I think it was  
6 about --

7 THE COURT: \$3,770 for Victims 1 and 2 or  
8 1,885 for each of these two victims jointly and severally  
9 with co-defendants Larry Brown-Austin and Shannon Marzano,  
10 correct?

11 MR. DEVAN: That part we have no objection to.

12 THE COURT: All right. Are you expecting an  
13 evidentiary hearing on the restitution issue or the amount  
14 that you object to based upon the report from the counselor?

15 MR. DEVAN: No, Your Honor. I think it's  
16 purely a legal question for Your Honor to consider in this  
17 matter.

18 THE COURT: All right. Thank you.

19 And, AUSA Skutnik, any comment at this time on that?  
20 Are you expecting an evidentiary hearing since you have the  
21 burden of proof associated with that restitution?

22 MS. SKUTNIK: We are not, Your Honor.

23 And I would add just for the record that although I  
24 filed my memorandum under seal, and the restitution letter  
25 from the therapist was heavily redacted, I did, under the

1 protective order in this case, provide an unredacted copy of  
2 the letter to counsel so that he would have more complete  
3 information as it related to the author.

4 THE COURT: All right. Thank you very much.

5 We will address that issue shortly, but I'd like to  
6 get through the plea, et cetera, before we go into that  
7 issue of restitution because that will really be the focus  
8 of this hearing, is evaluating that particular issue  
9 associated with the letter from the counselor as I see it.  
10 All right?

11 Now, am I correct, AUSA Skutnik, that you did not file  
12 any objections to the PSR and, therefore, you're not  
13 expecting an evidentiary hearing on any of that except -- I  
14 mean, are you expecting an evidentiary hearing?

15 MS. SKUTNIK: No, Your Honor. We did not file  
16 any objections. We accept the final report as written.

17 THE COURT: Thank you.

18 Now, defendant did plead guilty to Count 1 of the  
19 indictment, specifically conspiracy to commit sex  
20 trafficking by force, threats of force, fraud, and coercion,  
21 in violation of Title 18, United States Code,  
22 Sections 1591(a)(1), 1591(a)(2), and 1594(c).

23 According to the presentence investigation report and  
24 consistent with the plea agreement, the base offense level  
25 for the offense is 34.

1 Pursuant to United States Sentencing Guideline  
2 Section 2G1.1(a) (1), there is a two-level upward  
3 multiple-count adjustment for two victims, pursuant to  
4 United States Sentencing Guideline Sections 2G1.1 and  
5 3D1.4(a). And there is a Chapter 4 enhancement because the  
6 defendant is a repeat and dangerous sex offender against  
7 minors, and the offense level then is the greatest of  
8 Sections 4B1.5(a) (1) (A) or (B). And in this case the  
9 offense level determined under 4B1.5(a) (1) (B) (i) is 37, or  
10 the greatest and applicable offense level, because the  
11 statutory maximum term of imprisonment is life. Thus, the  
12 total offense level before acceptance of responsibility is  
13 37.

14 Now, to the issue of acceptance of responsibility, at  
15 paragraph 44 of the presentence investigation report, the  
16 defendant did provide a written statement accepting  
17 responsibility for his offense conduct.

18 AUSA Skutnik, does the government have a motion to  
19 reduce the offense level by three levels pursuant to United  
20 States Sentencing Guideline Sections 3E1.1(a) and (b)?

21 MS. SKUTNIK: We would make that motion now,  
22 Your Honor.

23 THE COURT: Thank you.

24 The Court grants the government's motion and reduces  
25 the offense level by three levels, pursuant to United States

1 Sentencing Guidelines 3E1.1(a) and (b). Thus, the total  
2 offense level is 33. The defendant's criminal history  
3 category is VI, which produces a guideline sentence range as  
4 follows: 262 to 327 months of imprisonment; a term of  
5 supervised release following imprisonment of five years to  
6 life; and a fine range of 35,000 to \$250,000. There is a  
7 \$100 mandatory special assessment. And pursuant to the  
8 Justice for Victims of Trafficking Act of 2015, the Court  
9 shall assess an amount of \$5,000 per count on any  
10 nonindigent person.

11 And pursuant to Title 18, United States Code,  
12 Section 3663(a) and United States Sentencing Guideline,  
13 Section 5E1.1, restitution shall be ordered.

14 Also pursuant to Title 18, United States Code,  
15 Sections 3563 and 3583, the defendant is required to  
16 register under the Sex Offender Registration and  
17 Notification Act and must comply with the requirements of  
18 that act as directed by the probation officer.

19 Are there any objections, AUSA Skutnik?

20 MS. SKUTNIK: No, Your Honor.

21 THE COURT: Any objections, Mr. DeVan?

22 MR. DEVAN: No, Your Honor.

23 THE COURT: Thank you.

24 Now, in the plea agreement, the 11(c)(1)(C) plea  
25 agreement, the parties agreed that the Court should impose a

1 term of imprisonment of 180 months. Am I correct in saying  
2 that the parties, meaning both United States Attorney's  
3 Office on behalf of the government and Mr. DeVan on behalf  
4 of the defendant, understood that the guidelines range would  
5 be significantly higher, but nonetheless agreed that the  
6 Court should impose a sentence or term of 180 months of  
7 imprisonment, AUSA Skutnik?

8 MS. SKUTNIK: On behalf of the government,  
9 Your Honor, yes. And that would be reflected in the  
10 guideline calculation, which is included in the plea  
11 agreement which is consistent with that found in the  
12 presentence report.

13 THE COURT: Mr. DeVan?

14 MR. DEVAN: Yes, we're in agreement, Your  
15 Honor, and urge the Court to accept the plea agreement of  
16 180 months.

17 THE COURT: All right. Thank you.

18 Understanding that I have read your sentencing  
19 memoranda where you explain your agreement for a sentence of  
20 180 months imprisonment, please explain for the record and  
21 on the record in open court why and how -- given the nature  
22 and circumstances of the offense, to include the severe harm  
23 to the victims; the defendant's personal history and  
24 characteristics, to include his criminal background and  
25 history, which is extensive; the need for the sentence to

1 reflect the seriousness of the crime, and it is a horrendous  
2 crime; promote respect for the law, provide just punishment  
3 for the offense to Mr. Brown-Austin, and deter criminal  
4 conduct -- the sentence of 180 months is appropriate.

5 AUSA Skutnik, I'll hear from you first.

6 MS. SKUTNIK: Thank you, Your Honor.

7 And, Your Honor, may it please the Court:

8 The 3553(a) factors in almost every way seem to bode  
9 against an agreement of the mandatory minimum term of  
10 incarceration of 15 years the defendant would have received  
11 on Counts 2 and 3, the substantive counts. There's no  
12 question about that.

13 It's hard for the government to talk about Larrien  
14 Brown-Austin in this case without absolute disdain for his  
15 offense conduct and his criminal history. There's no  
16 question about that.

17 And so we certainly understand why the Court would  
18 have grave concern over this agreement. And we did address  
19 this in part during a previous sentencing for the  
20 defendant's father and also a co-defendant, Ms. Marzano.

21 The number one driving factor, which the government  
22 spends a great deal of time talking about in its sealed  
23 sentencing memorandum, is the health and wellbeing of these  
24 two young adult women. These women have suffered tremendous  
25 trauma, coupled by the fact that they are addicted to

1 substances such as heroin and methamphetamine. I have  
2 discussed this case at tremendous length with Victim  
3 Number 1, SD, as well as discussed the case with Victim  
4 Number 2, ML. And there are two things that stick out that  
5 weigh heavily on this plea agreement.

6 First of all, this case has been pending for a couple  
7 of years. And in that period of time, while that may be a  
8 very normal course of action in some other types of cases,  
9 particularly given the pandemic and the incredible  
10 restrictions that were placed on the courts during the two  
11 years that we have been under the pandemic, it is not a  
12 normal sense of time for victims of human trafficking, or  
13 similarly, child victims. And the statutes reflect that.

14 And in particular, a case like this where the  
15 defendant has pled guilty to force, fraud, or coercion as  
16 the means to commit sex trafficking. And one of the ways  
17 that the defendant controlled these two particular women was  
18 through the use or withholding of drugs. He kept them high  
19 all the time so that they would be compliant and that they  
20 would repeatedly perform sexual acts that would benefit him  
21 financially, and he would take that money. He was also  
22 physically abusive during that period of time. And those  
23 details are described in the PSR and the government's  
24 memorandum as well.

25 When this case was charged, one victim was in -- had

1 just gotten out of the hospital and was trying to get clean.  
2 The other victim followed suit. But in the period of time  
3 that this case has been pending and during the negotiations  
4 between the government and defense counsel, there have been  
5 several times when the victims have been either AWOL or have  
6 relapsed and were extremely sick and, to be very honest,  
7 thought dead by the government because we could not locate  
8 them. And they had relapsed, and their disease is quite  
9 grave. And as this court is aware, sitting on this bench,  
10 the prospects of one recovering from such horrific drugs  
11 such as heroin and methamphetamine, this has been -- the  
12 process, as they say, how the sausage got made, this has  
13 been very important in the government's consideration of  
14 negotiating pleas in this case.

15 So I don't mean to be long-winded, Judge, but I think  
16 it bears saying in justifying this plea agreement that I  
17 have swallowed because I think it's the right thing to do.

18 The second thing that I think is important in this  
19 case is, unlike most of the other cases certainly that are  
20 prosecuted by the federal government, the types of evidence  
21 that we would often use to corroborate or prop up these two  
22 women were not recovered. And I mention in my memorandum  
23 that this actually started as a parole search. So it was  
24 not an evidence-gathering mission. It was a mission to go  
25 in to follow up on complaints of alleged trafficking. The



1 defendant was arrested with a firearm, there were drugs in  
2 the house, and Victim Number 1, SD, was recovered.

3 It was days later when the Canton Police Department  
4 obtained a search warrant, but by the time that they got to  
5 the house, the house had been set on fire. And the Court is  
6 aware the government investigated that matter, there was no  
7 question, we had two opinions that indicated that the fire  
8 was arson; however, we could not establish who set the fire.  
9 But mysteriously the house is set on fire and most of the  
10 evidence is destroyed.

11 Now, a year or so later, the FBI did enter the home  
12 that was still boarded up in an attempt to acquire some  
13 materials. But I say all of this to say, unlike what we  
14 would often see in a case of this seriousness, for purposes  
15 of trial preparation, we did not have logs, we did not have  
16 tallies for appointments, other types of corroborating  
17 evidence that you might find. We did find some evidence on  
18 a cell phone that was seized in the parole search.

19 So I think that's like the second important factor  
20 here in consideration of weighing the government's evidence  
21 in this case.

22 Now, that's not to say that we don't think that we  
23 have a case against Larrien Brown-Austin, but we know how  
24 these things can affect ultimately a presentation to a jury.

25 I would sum up by saying, Your Honor, that SD's

1 health -- mental health is fragile. We had arranged for her  
2 to come in person -- we had acquired funds for her to  
3 travel, to come in person to the sentencing, and ultimately  
4 she ended up saying, "I just can't -- I can't do it. I feel  
5 that that would be a significant setback for me."

6 Her sobriety and her mental health are fragile, and  
7 she has worked so hard. And I've witnessed the work that  
8 she has done and the transformation that she has made, but  
9 she is on a long journey. And she is in agreement with the  
10 resolution that does not require her to sit on that stand in  
11 front of this defendant to tell her truth and to talk about  
12 what happened to her while she was in that house.

13 Similarly, in meeting and speaking with ML, she  
14 expressed similar concerns about coming to court to testify.  
15 Sadly, her words were, "I really just want to put this  
16 behind me," which as we know -- as I know in my experience  
17 with these kind of cases is perhaps not the healthiest thing  
18 to do. I don't think that's going to happen. I think that  
19 she doesn't want to think about it. Luckily she's currently  
20 sober, but, again, adamant that she does not believe that  
21 she could withstand emotionally a trial on the matter.

22 So, again, I apologize for being long-winded, but I  
23 think that although all of the rest of the 3553(a) factors  
24 are compelling to reject this plea agreement, when you lay  
25 those on the balance scale and you, in my opinion, consider

1 that we don't want to do more harm to these women in order  
2 to force this matter to trial or to go for a greater  
3 sentence, I don't want to do more harm to them. I want to  
4 make sure that I have a bird in the hand. I want to make  
5 sure that this defendant does not get released, does not go  
6 back to repeat this behavior, and it would protect the  
7 public even if it is for 15 years.

8 So those are the compelling reasons why the government  
9 believes that, although it is a significant variance, that  
10 there are reasons to justify the Court accepting this  
11 sentence.

12 Thank you.

13 THE COURT: And you'll confirm then that both  
14 victims were given the opportunity to weigh in on this  
15 11(c)(1)(C) agreement with the agreed term of 180 months and  
16 were okay with that?

17 MS. SKUTNIK: We have complied with our victim  
18 notification, but, Your Honor, we've gone above and beyond.  
19 They have -- I have spoken personally to the victims, they  
20 have spoken with victim advocates from both my office as  
21 well as the FBI, and in the end it is their reasoned  
22 decision that this is a good resolution.

23 THE COURT: All right. Thank you.

24 Mr. DeVan.

25 MR. DEVAN: Your Honor, I would adopt what the

1 government said in terms of reason to accept this plea  
2 agreement.

3 As the Court is aware, the parties are most conversant  
4 with the facts of a case, they are most aware of the  
5 strengths and weaknesses of cases. That goes for the  
6 defense in this case also in terms of negotiating a result  
7 which we felt would satisfy the standards of 3553.

8 I know the Court's concerned for the future about  
9 Mr. Brown, but for the first time he will be in the federal  
10 system, which provides mental health treatment as well as  
11 drug addiction treatment like no other system. He has been  
12 in and out of the state system a few times; and  
13 unfortunately, I hate to be too critical, but it does not  
14 provide the kind of attention and treatment that he has  
15 needed throughout his life.

16 I would ask the Court to recognize first that what has  
17 happened -- and we put this in our sentencing memo -- as so  
18 often happens, sex abusers have been the victim of sex abuse  
19 themselves. As a child he was abused physically and  
20 sexually. He turned to drugs. He obviously has mental  
21 health problems as shown by the records of the -- as  
22 summarized in the presentence report shown by the records of  
23 his incarceration since arrest in this case. There have  
24 been all sorts of mental health issues. He even tried to  
25 kill himself.

1           So we hope to get the kind of treatment that only the  
2       federal system can provide in the penological setting. And  
3       at the end of this matter, when he is eventually released,  
4       he will be required to respond for life to sexual reporting  
5       requirements. And that will assist in protecting the  
6       public. He'll be under a short leash, and he will be under  
7       a microscope. And that way -- no one can of course  
8       guarantee the future, but we would hope that he in the  
9       meantime with mental health treatment and drug addiction  
10      treatment, also vocational training, that he can finally get  
11      on a path of life which would be constructive.

12           And so I echo the government's concerns about  
13      proceeding with this case, but likewise, on  
14      Mr. Brown-Austin's behalf, we had to weigh the pros and cons  
15      of a trial. And we came to a negotiated result, which I  
16      believe and submit to the Court is a fair resolution, and I  
17      urge the Court to accept the plea agreement, Your Honor.

18           THE COURT: All right. Thank you.

19           As much as it pains me -- and only because the victims  
20      will be better for not going to trial and having to testify,  
21      and I understand the perhaps evidentiary proof issues as  
22      well, but I would say primarily for the benefit of the  
23      victims, that's why I'm going to accept the plea agreement,  
24      and I'll say swallow it very -- in a very difficult way  
25      because the conduct of this defendant vis-à-vis these

1 victims was, again, horrendous as described -- well  
2 described in the PSR. And what he did to them is really  
3 unthinkable for people to have to endure that kind of, in my  
4 mind, torture.

5 So, in that regard, it's for the benefit of the  
6 victims and for the reasons stated on the record by both  
7 AUSA Skutnik and Mr. DeVan that I will accept the  
8 11(c)(1)(C) plea agreement and vary downward from the  
9 guidelines range of 262 to 327 months of imprisonment to  
10 impose a term of imprisonment of 180 months consistent with  
11 that plea agreement.

12 Now, what is the government's position regarding the  
13 JVTA \$5,000 assessment, the imposition of a fine, and, more  
14 specifically, whether Mr. Larrien Brown-Austin is indigent  
15 for purposes of evaluating the assessment and/or fine?

16 MS. SKUTNIK: Your Honor, the government does  
17 not believe that Mr. Brown-Austin has the ability to pay a  
18 fine. The JVTA assessment of course -- the analysis is  
19 prospective, his ability to earn in the future.

20 However, I guess I would couch my remarks this way.  
21 If the JVTA was designed to create a fund so that victims  
22 like SD could go to the fund with their expenses and submit  
23 them, much the way that we do in the state system -- but it  
24 is not up and running at this point because it's not funded  
25 as it has not been in existence very long.

1           So if the Court is inclined to grant restitution of  
2           some amount, whether it is some, all, or none of what is  
3           being requested by SD and the other restitution request for  
4           ML, then I would indicate I would rather have the money go  
5           toward that restitution to them than to have money be  
6           detracted to go to the JVTA. And I don't mean to be -- I  
7           don't mean to split my opinion that way, but I think that  
8           that's the priority.

9           So if restitution is permissible -- well, I mean,  
10          clearly there's no question, I think that the lost wages  
11          analysis is easily applicable. We of course believe that  
12          restitution is mandatory and appropriate to whatever amount  
13          the Court sees fit as it relates to SD's request, but we  
14          believe that paying that in the statutory order of priority  
15          is the number one priority. Restitution first, then the  
16          JVTA, then any fine.

17                   THE COURT: All right. Thank you.

18          Mr. DeVan, in terms of the JVTA and the fine -- we'll  
19          get to a restitution here shortly, I understand that that's  
20          interwoven with what AUSA Skutnik just placed on the  
21          record -- but your thoughts?

22                   MR. DEVAN: Well, a special assessment, no  
23          matter what his financial situation, of \$100, is required.

24                   THE COURT: Yes.

25                   MR. DEVAN: We acknowledge that.

1           But, likewise, we agree with the government. He is  
2           unable to pay 5,000. And the exception to this mandatory  
3           \$5,000 statutory fine is if a person is unable to pay, and  
4           I -- it appears clearly that he's unable to pay.

5                   THE COURT: Well, that may be true today, but  
6           I can look prospectively to see if he has the ability to pay  
7           in the future. I understand he's going to be in prison for  
8           15 years, but nonetheless, he still could come out and  
9           obtain a job and work. And while he's in the prison system,  
10          there are funds available to him as well that can be used,  
11          even though they would be small and incremental, to pay the  
12          assessment.

13                   MR. DEVAN: Well, it says -- one of the  
14          qualifications is on any nonindigent person. By that  
15          reasoning, anyone who is indigent could, you never know, win  
16          the lottery, which I don't think is going to happen. And so  
17          I would request that -- that mandatory fine of 5,000 not be  
18          imposed because of his indigency.

19                   And although the Court says -- it considered,  
20          rightfully so, what about the future, well, the point is at  
21          this point in time. And I would request that that 5,000  
22          mandatory fine not be imposed because of his indigency at  
23          this point, Your Honor.

24                   THE COURT: The assessment you mean, the  
25          \$5,000 assessment?



1 MR. DEVAN: Well, it's a five --

2 THE COURT: Do you have --

3 MR. DEVAN: It's a \$5,000-per-count  
4 assessment. Yes.

5 THE COURT: All right. I think I disagree  
6 with you on the -- yes, he's indigent as of now. As he sits  
7 here today, he's been incarcerated for many months now since  
8 2020, but nonetheless, I do believe that under the law I can  
9 evaluate his future ability to pay.

10 But, AUSA Skutnik, I'll hear from you on that.

11 MS. SKUTNIK: The Court is correct.

12 And the government has placed that in its sentencing  
13 memorandum at page 14 pursuant to *United States versus*  
14 *Shepherd*, 922 F.3d 753: "The Court must impose the  
15 additional special assessment unless it finds that the  
16 defendant is unable to pay; however, the defendant's current  
17 and future financial status is to be evaluated when making  
18 an indigency determination."

19 And I would point out that Larrien Brown-Austin has  
20 the ability to work, he has -- he has received education, he  
21 is physically capable of working, he has held employment in  
22 the past when he was not choosing to make his money by  
23 trafficking other women. So in the future he certainly has  
24 the ability to work while he's incarcerated and the ability  
25 to work in the future when he is released and on supervised

1 release. And I believe it is up to 25 years. And I'm not  
2 sure where I'm pulling that from, but that he -- he can be  
3 required to pay this fine.

4 So in looking at it that way, I think the government's  
5 argument is less about ability to pay because future  
6 considerations are appropriate versus priorities. But we  
7 believe that he does have an ability to earn money, both  
8 while incarcerated and while on supervised release, as  
9 required by law.

10 THE COURT: I think you also cited in your  
11 sentencing memorandum -- AUSA Skutnik, you certainly cited  
12 the *Shepherd* case that you just mentioned, but you also  
13 cited *United States versus Kelley*, 861 F.3d 790 at 801, 802,  
14 that's from the Eighth Circuit, 2017: "Negative net worth  
15 at the time of sentencing is not dispositive of the issue.  
16 If at some point the defendant would be able to pay the  
17 additional special assessment, this ability to earn money in  
18 the future precludes finding of indigency for purposes of  
19 section 3014."

20 Did I quote that correctly from your sentencing  
21 memorandum at page 14 and 15, page IDs 1373 and 1374?

22 MS. SKUTNIK: You have, Your Honor.

23 THE COURT: And I think you go on to say that  
24 you believe that Mr. Brown-Austin has the ability to earn  
25 income, although if he remains clean, sober, and

1 law-abiding -- and you also mention -- I think you say in  
2 fact the fine will not expire for 20 years, is that the fine  
3 or the assessment? Because you just said 25 years, and I'm  
4 not sure --

5 MS. SKUTNIK: I do stand corrected. It is 20  
6 years. And the statutes that apply to the collection of  
7 this money are the same that relates to a fine, and it is 20  
8 years to collect this particular assessment, similar to a  
9 fine.

10 THE COURT: So if he's working while  
11 incarcerated for these 15 years and then is able to secure  
12 employment after he's released for up to five years, that  
13 money could be used to pay the assessment, correct?

14 MS. SKUTNIK: Actually, Judge, it's 20 years  
15 from his release from custody.

16 THE COURT: Then I misunderstood that.

17 Oh, yes. For 20 days from the date of his release  
18 from custody. Thank you for that clarification.

19 Do you see that, Mr. DeVan, in the government's  
20 sentencing memorandum?

21 MR. DEVAN: Oh, yes. I'm familiar with the  
22 government's argument, Your Honor, and we simply don't agree  
23 with that position, if it would, for the record.

24 THE COURT: Thank you.

25 Now, to the issue of restitution, because it's

1 intertwined now with the assessment issue, at least  
2 according to AUSA Skutnik, she would rather the Court impose  
3 restitution for these particular victims as distinguished  
4 from assessing or ordering the assessment of \$5,000.

5 But what would you like to say concerning whether the  
6 Court -- I understand there's an agreement, the defendant  
7 isn't objecting to the amount already mentioned for the two  
8 victims that will be -- Mr. Larrien Brown-Austin will be  
9 jointly and severally liable for with his co-defendants,  
10 Larry Brown-Austin and Shannon Marzano.

11 But what's the government's position with regard to  
12 the request for restitution -- and I note that you cite  
13 *In re: Sealed Case* as one of the cases in your brief.  
14 Correct, AUSA Skutnik?

15 MS. SKUTNIK: Yes, Judge. I believe I cited  
16 that several times. It's quite informative.

17 THE COURT: Have you seen the more recent  
18 case, the negative treatment of that case from the Tenth  
19 Circuit Court of Appeals, a case captioned *United States of*  
20 *America versus Anthony* that was filed on October 31st, 2019?

21 MS. SKUTNIK: I did not review *Anthony*, Your  
22 Honor.

23 THE COURT: And they actually talk about, you  
24 know, of course the government has the responsibility, must  
25 prove the restitution by a preponderance of the evidence.

1 And the issue I think that you raise under *In re: Sealed* --  
2 and even defense counsel raises -- is whether or not the  
3 losses were proximately caused by the defendant. And in  
4 *Anthony* they go on to state that it's more of a -- a more  
5 stringent standard, it's but-for as distinguished from...

6 So did you want to read *Anthony*? It's a stronger --  
7 but, again, I understand that one's from the Tenth Circuit  
8 and one from the DC Circuit. And I haven't seen anything  
9 from the Sixth Circuit.

10 MS. SKUTNIK: Your Honor, I accept the Court's  
11 summary of *Anthony*, and I appreciate that. It's curious  
12 because in the child exploitation arena, the same issue went  
13 to the Supreme Court in *Paroline*, and they rejected the  
14 but-for --

15 THE COURT: Yes --

16 MS. SKUTNIK: -- analysis.

17 THE COURT: -- but *Anthony* discusses the  
18 distinction between that because that was child pornography  
19 as distinguished from trafficking of a minor or an adult, et  
20 cetera. So actually *Anthony* goes through that case from the  
21 Supreme Court, makes the distinction, and nonetheless comes  
22 down on the side of the standard or is but-for as  
23 distinguished from proximately caused.

24 MS. SKUTNIK: However, even analyzing this  
25 case in a but-for burden of causation, Your Honor, I believe

1       that still the factual basis here satisfies the but-for  
2       relationship. The activity that occurred in the house, the  
3       trauma that was inflicted upon this young lady -- I say  
4       young lady, she's -- but what was inflicted upon her at the  
5       hands of this defendant, the violence, the fact that she had  
6       absolutely no choice but to complete what was sometimes ten  
7       or more sexual acts a day to make money for this defendant,  
8       the fact that he would pull her out of bed if she was trying  
9       to sleep after not having slept for days and throw her into  
10      a shower so that she might be forced to complete sex acts,  
11      the fact that she was threatened violence and that she  
12      witnessed extreme violence in her presence in order to  
13      compel her to engage in these acts in a very compact but  
14      intense period of two months, coupled with the nonstop  
15      administering of drugs to her that exacerbated her addiction  
16      and --

17                   THE COURT: When you say exacerbated her  
18      addiction, are you saying that she was addicted to drugs  
19      before her interactions with the defendant here?

20                   MS. SKUTNIK: SD had used drugs. Yes, she had  
21      used drugs prior to interacting with this defendant. She  
22      had used heroin.

23                   THE COURT: I thought that there was, in the  
24      PSR, a representation that she had not.

25                   MS. SKUTNIK: That would be --

1 THE COURT: First exposure.

2 MS. SKUTNIK: ML indicated in her statement  
3 that she did not.

4 THE COURT: Okay. So SD had used previously,  
5 correct, and had a substance abuse issue?

6 MS. SKUTNIK: Yes.

7 THE COURT: That was exacerbated by the  
8 defendant's treatment of her to include giving her those  
9 drugs, making her dope sick, et cetera, correct?

10 MS. SKUTNIK: Yes.

11 And it is my understanding that SD was a heroin user,  
12 had used heroin in the past, had received treatment in the  
13 past, but that in addition to heroin in this house, the use  
14 of methamphetamine was used to complement the effects of the  
15 drugs so that she might be more productive for purposes of  
16 trafficking.

17 And, again, that it was nonstop. There was no  
18 opportunity to walk away from the drugs, from the addiction,  
19 from the behavior, from the violence.

20 And that that combination of factors has resulted in  
21 incredible trauma for which she has sought and been  
22 participating in not only drug treatment but also, as noted  
23 in the restitution request, a complement of therapies to  
24 include drug-assisted treatment for the heroin addiction as  
25 well as therapy, intensive therapy to deal with the trauma

1 of the trafficking component as well.

2 I don't know if the Court wants me to stop here -- and  
3 we're just talking about the but-for analysis, so -- or if  
4 the Court wants me to keep going in terms of any remarks I  
5 want to make about restitution.

6 THE COURT: I understand what you're saying.  
7 I guess I'm going to ask you a few questions that come to my  
8 mind, and certainly I'll give Mr. DeVan the opportunity to  
9 speak as well to the restitution issue and the but-for  
10 versus -- you have to prove this by preponderance of the  
11 evidence, correct?

12 MS. SKUTNIK: (Indicating.)

13 THE COURT: Would you agree that the letter  
14 that was sent by the [REDACTED] to the  
15 Court -- did I misspeak?

16 MS. SKUTNIK: No. I would just prefer that we  
17 keep the location off of the record.

18 THE COURT: Yes. I'm sorry. That will be  
19 under seal.

20 But, nonetheless, the report recommendation I received  
21 is from a community director, correct?

22 MS. SKUTNIK: Yes.

23 THE COURT: And there's representations about  
24 what other doctors opined, correct?

25 MS. SKUTNIK: Yes.



1                   THE COURT: But there's no report stating  
2 anything to a reasonable degree of medical certainty or  
3 psychological certainty or any of that, correct?

4                   MS. SKUTNIK: That's correct.

5                   THE COURT: And so I'm left -- and there's no  
6 testimony to that effect, from what I see reading these  
7 other opinions associated with restitution, there was either  
8 grand jury testimony that was relied on, there were  
9 written -- or there were testimony by witnesses, experts at  
10 the hearing, I understand that a victim does not have to  
11 testify, but I understand -- and I understand that the -- in  
12 one case I believe what the victim may have told  
13 investigators was part and parcel of what the Court  
14 evaluated, but that was in conjunction with testimony  
15 elicited at trial as well. Am I wrong about that?

16                  Because what I have a real problem with is the lack of  
17 a true medical opinion relating the necessity of these  
18 future expenses to the trauma that we know was endured. And  
19 I don't see anything in this recommendation acknowledging  
20 prior issues with substance abuse or any records of  
21 treatment already undertaken. So that's what I have a major  
22 problem with. And also the -- but I guess that's the  
23 biggest issue that I have with it. There's nothing that's  
24 stated to any kind of reasonable degree of certainty by a  
25 medical or psychology professional, and certainly there's no

1 testimony. And there's not even a report from those doctors  
2 that are referred to by the counselor in this letter.

3 MS. SKUTNIK: I understand the Court's  
4 concerns. I can only offer the Court what I have.

5 THE COURT: All right. What else would you  
6 like to say then in support of request for restitution?

7 MS. SKUTNIK: Your Honor, I would submit to  
8 this court that we know that the victim is undergoing these  
9 treatments currently.

10 THE COURT: Well, see, I don't know that from  
11 this letter. All I know is that there was some -- something  
12 began back in 2020, I think. Let me see here.

13 (Pause in the proceedings.)

14 THE COURT: Again, there's no real detail  
15 about what's been happening.

16 Okay. Began in November of 2020. But I don't have  
17 any information of what's been happening since then. I  
18 mean, certainly there's the incorporation of the diagnoses,  
19 but there's no information concerning the treatment or how  
20 she's doing or her attendance at treatment or anything that  
21 would give me more information to evaluate whether the  
22 future treatment is speculative or not.

23 MS. SKUTNIK: Sorry. Your Honor, I read this  
24 document to indicate that she is undergoing these therapies  
25 presently, is how I read this document.

1           To be fair -- I understand what the Court is saying --  
2           we can by statute adjourn and have up to 90 days to hold a  
3           hearing if the Court would like me to produce medical  
4           records to the extent that I'm capable of doing that. It  
5           is...

6                       THE COURT: And that's my primary concern is  
7           that I don't have an expert, let's say. There's got to be  
8           somebody who's going to testify to a reasonable degree of  
9           some certainty because I understand that's -- that's how we  
10          do things in the civil world. I understand this is  
11          criminal. But yet in terms of the preponderance of the  
12          evidence is the same burden, whether it's civil or proving  
13          your restitution, I don't have anything that demonstrates to  
14          me, aside from what I know she experienced in the past,  
15          whether or not -- this information just seems insufficient  
16          to me.

17                   And I have no problem continuing or giving you 90 days  
18          to supplement with other information or testimony or reports  
19          that detail the treatment and the bases for the opinions  
20          expressed and an actual expression of that opinion in a  
21          written report and/or affidavit from someone.

22                   MS. SKUTNIK: Well, Your Honor, I believe that  
23          that would -- the government would be called upon to make  
24          such a request because I don't -- I appreciate that there  
25          are issues with awarding speculative or future restitution

1 matters, but what I don't want is for this woman to be  
2 denied the opportunity to present additional evidence on her  
3 claim for restitution as I do believe that these are all --

4 THE COURT: And it's the proof issue too.  
5 This is not sufficient proof, this letter.

6 MS. SKUTNIK: I think that's what I'm speaking  
7 to, Judge.

8 THE COURT: Yes.

9 MS. SKUTNIK: To afford her -- it is not my  
10 obligation to collect additional evidence, but I want to  
11 afford her the opportunity to provide additional  
12 information, if they want to, to the Court, such that we  
13 might hold a hearing and the Court might consider any  
14 additional evidence that can be produced on behalf of her  
15 restitution claim.

16 But I want to point out that by statute, that's a  
17 separate hearing. It does not have to -- we don't have to  
18 toll this sentencing.

19 THE COURT: Correct.

20 MS. SKUTNIK: We can conclude sentencing --

21 THE COURT: That I know.

22 MS. SKUTNIK: -- on this matter and have that  
23 hearing separately.

24 THE COURT: All right. Thank you.

25 Mr. DeVan, I have read the objection that you filed to

1 the restitution, and the other issue too is the other -- the  
2 agreed-to amount is going to be imposed jointly and  
3 severally, and I think part of Mr. DeVan's argument as to  
4 the restitution requested by SD is that this defendant was  
5 not the sole cause of the harm to the victim, SD, is that  
6 correct?

7 MR. DEVAN: That's correct, Judge.

8 And I would add, in terms of any continuance to have a  
9 hearing on a later date, our position is that our objections  
10 are sufficient to overcome this claim of restitution by the  
11 treatment center, unnamed treatment center. Aside from the  
12 \$1,800 per defendant restitution, we're not speaking about  
13 that. We agree with that. But the issue of the cost of  
14 treatment at this treatment center in the future I think is  
15 well-documented in our objections.

16 THE COURT: Well, the case law, though, that's  
17 been cited by the government is that you can take into  
18 account future costs. My issue is not necessarily that  
19 they're speculative, but they haven't been stated in a  
20 legally sufficient way evidence-wise for me to consider.

21 MR. DEVAN: I understand.

22 THE COURT: And so that would then require a  
23 hearing whereby that could be done, which is why I believe  
24 AUSA Skutnik is requesting the additional 90 days to allow  
25 the victims or SD to supplement the information to attempt

1 to secure that restitution.

2 MR. DEVAN: I understand.

3 THE COURT: But we're still left with the  
4 joint and several liability issue, which -- I'm not sure how  
5 that's going to be rectified since the other two defendants  
6 have already been sentenced.

7 MS. SKUTNIK: Well, Your Honor, I think what  
8 is borne out in the facts of this case and in the  
9 representations in front of the Court is while they may have  
10 operated in a conspiracy, there is only one person in this  
11 conspiracy that inflicted violence, threats of violence, the  
12 presence of a firearm, and administered drugs. No other  
13 party to this conspiracy administered drugs to these young  
14 women -- in particular, SD -- or threatened them or caused  
15 physical violence upon them as this particular defendant, as  
16 is reflected in the disparity in the sentencing because of  
17 the respective roles of the parties.

18 So it is the allegation that while others, such as his  
19 father, provided drugs to Larrien to be used in the  
20 household and reaped the benefit of the money and that  
21 Ms. Marzano participated in recruitment and containment in  
22 obtaining methamphetamine, that it is this defendant that  
23 has caused the trauma that is reflected in this restitution  
24 agreement.

25 So we're not asking for joint and several

1 responsibility as it relates to this request. And should  
2 after hearing it be found, we believe that it lays solely on  
3 the shoulders of this defendant.

4 THE COURT: All right.

5 I understand that argument. But, nonetheless, I do  
6 believe that the victim, SD, should be given that 90 days to  
7 provide additional documentation, and that should also  
8 include -- again, I don't have any reference in this letter  
9 to an acknowledgment of prior issues with drugs to sort of  
10 evaluate what would have been necessary independently of  
11 this issue but certainly I think the offense conduct of the  
12 defendant. So I just need more information to be able to  
13 fully evaluate what harm was caused to her and what  
14 restitution is reasonable to impose if I have the  
15 documentation necessary to do so.

16 MS. SKUTNIK: I appreciate the time from the  
17 Court to address this issue. Thank you.

18 MR. DEVAN: We would just hope to go forward  
19 at least with the imposition of sentence today, if we can.

20 THE COURT: Oh, yes, we will. Absolutely.  
21 And that's why I asked at the beginning if anyone was  
22 expecting an evidentiary hearing. I didn't know if we would  
23 have somebody testifying with an opinion or other  
24 documentation submitted, I wasn't sure, but I knew from  
25 reviewing the documentation that I had before me that it was

1 not sufficient.

2 All right. Now, the other issue, though, that I have,  
3 AUSA Skutnik, you would rather the Court impose restitution  
4 specifically for the benefit of the victims, both SD and ML,  
5 in lieu of an assessment, but with the restitution being an  
6 issue to be decided in the future. How does that impact  
7 your argument associated with the \$5,000 assessment?

8 MS. SKUTNIK: Your Honor, the government's  
9 position is -- and I mentioned briefly before -- that the  
10 order of priority for collecting money from a defendant is  
11 restitution, assessment, special assessment, fine. I don't  
12 anticipate a fine in this matter. So I guess what I'm  
13 saying is the Court is not precluded from imposing the  
14 \$5,000 special assessment under the Justice for Victims of  
15 Trafficking Act if the Court finds that the defendant has  
16 the future ability to pay this assessment.

17 And we are not arguing that he -- in fact, we argued  
18 in our memorandum that he does have the ability to pay in  
19 the future. So we believe it would be appropriate for the  
20 Court to order that, we would just -- I think our position  
21 was we wanted to make sure that if there was going to be an  
22 order of restitution, that the victims were covered, given  
23 that statutorily that would take priority if there was a  
24 future order, they would be taken care of.

25 So, with that being said, we do stand by our argument



1       that he has a future ability to pay a Justice for Victims of  
2       Trafficking Act assessment of \$5,000.

3                   THE COURT: All right. Thank you.

4               Now, Mr. DeVan, would you like to say anything else on  
5       behalf of your client?

6               And then certainly I'll give your client the  
7       opportunity to speak.

8                   MR. DEVAN: Your Honor, I think that we've  
9       pretty much exhausted all of the facts, both as to the facts  
10      and circumstances of the case and history and  
11      characteristics of the defendant.

12              And my client does have something to say, and I would  
13      ask the Court to take that into consideration in imposing  
14      his sentence and as grounds also to accept the plea  
15      agreement as recommended by the parties.

16                   THE COURT: Thank you.

17              And, Mr. Brown-Austin, you certainly have the right to  
18      make a statement or present any information in mitigation.  
19      Would you like to do so?

20                   THE DEFENDANT: Yes, ma'am.

21                   THE COURT: All right. Please do. Speak  
22      directly into the microphone.

23              You may sit down. It just makes it easier for our  
24      court reporter to hear you if you're talking directly into  
25      the microphone.

1 THE DEFENDANT: Thank you.

2 In 2018 I went to live at a home that my father owned.  
3 I got involved with drugs and prostitution. I know that  
4 this is wrong, and I pled guilty because I accept  
5 responsibility for my conduct. And I understand that I must  
6 serve a period of incarceration as punishment.

7 Your Honor, as alcohol impairs the ability to walk or  
8 drive, heroin, meth along with other opiates, an  
9 embarrassment, impaired my ability to think correctly, to  
10 get the therapeutic help I needed from the sexual, physical,  
11 and emotional abuse I suffered during my preadult years,  
12 which factored into my decision to self-medicate throughout  
13 my life instead of learning the proper coping skills to  
14 break the cycle I was injured by.

15 As the courts gather information to make judgments,  
16 I'm explaining how I made it before you today, not to make  
17 excuses.

18 I'm asking, first to all, those that I've hurt in any  
19 way to please forgive me. The person I was when we were  
20 doing drugs together is not the person I am, and it isn't  
21 the person I want to be. I do wish more than anything that  
22 I can take every second of the past we shared back. Knowing  
23 that's impossible, I can only pray for forgiveness.

24 And I realize that I don't have the right to ask for  
25 mercy, but I'm sincerely hopeful for compassion and

1 understanding of how I became this way so that while I'm  
2 paying my debt to society, you will recommend that I receive  
3 mental health and drug treatment. I am determined to turn  
4 my life around so that I will be an asset to my family, my  
5 community, and not a liability.

6 Thank you, Your Honor, for allowing me to speak.

7 THE COURT: Thank you.

8 Anything to add on behalf of your client, Mr. DeVan?

9 MR. DEVAN: No, Your Honor. But I would  
10 accept -- I would ask for a recommendation to Victorville  
11 FCI Medium --

12 THE COURT: I'm sorry. Could you repeat that,  
13 please.

14 MR. DEVAN: That's Victorville Medium II  
15 institution. His mother is moving to the Las Vegas area,  
16 and at least she'll be within a day's drive from seeing him  
17 from time to time. Victorville, California. The medium II  
18 institution I believe is his security level. And of course  
19 that's a recommendation.

20 I would also ask for a recommendation for mental  
21 health treatment, sexual offender treatment as well as drug  
22 abuse if he qualifies for the RDAP program, the Residential  
23 Drug Abuse Program, or any other drug and addiction program  
24 they might have available.

25 THE COURT: All right. Thank you.

1 Any final statement on behalf of the government?

2 MS. SKUTNIK: Your Honor, while I think that  
3 there are many facts that belie the statement made by the  
4 defendant here in court today, I find no purpose on drilling  
5 down on those as I'm asking the Court to accept the agreed  
6 sentence. And it doesn't matter when the defendant started  
7 engaging in this behavior and so on.

8 So I have nothing further to add. Thank you very much  
9 for allowing me to speak.

10 THE COURT: Thank you.

11 As noted, I have accepted the 11(c)(1)(C) plea  
12 agreement for the reasons already stated on the record.  
13 Even in doing so, I have considered the relevant factors set  
14 out in Title 18, United States Code, Section 3553(a). And  
15 certainly in my mind those factors weigh heavily in terms of  
16 the offense conduct. And what happened to these two  
17 victims, that weighs in favor of a longer period of  
18 incarceration as does the history and characteristics of the  
19 defendant.

20 I understand what's been said today by the defendant  
21 himself and in the letters that were written to me, but I  
22 also understand from reading the PSR that the very mom who  
23 wrote a letter of recommendation on Mr. Brown-Austin's  
24 behalf was in communication with him early on to try to  
25 contact one of the victims. That's in the PSR. So I'm not

1       sure that I give any credibility to that particular letter  
2       of recommendation. That's the only one I can speak to  
3       because her conduct vis-à-vis the defendant is documented in  
4       the PSR in terms of phone calls from the jail.

5           So I do believe, again, for the reasons of ensuring  
6       that the victims are not retraumatized, and they agree with  
7       the plea agreement, and for that reason and to a certain  
8       extent to the issues of proof at trial, given the  
9       circumstances as to how this came -- the investigation and  
10      the charges that came to be, that's why I am agreeing to  
11      impose the 180-month sentence of imprisonment in this case.

12 So I don't think I need to belabor any more.

13	Do you, Mr. DeVan?
----	--------------------

14 MR. DEVAN: No, Your Honor. I think as a  
15 matter of statutory law he automatically gets credit for  
16 time served. He's been in jail for two-and-a-half years at  
17 this point.

18 THE COURT: Yes. I understand that. But in  
19 terms of setting forth the factors for my sentencing that  
20 I'm going to impose.

21 MR. DEVAN: I think you were very thorough,  
22 Judge, and I thank you.

23 THE COURT: AUSA Skutnik, are you satisfied as  
24 well?

25 MS. SKUTNIK: We are, Judge. Thank you.

1 THE COURT: Thank you.

2 Pursuant to the Sentencing Reform Act of 1984 and  
3 Title 18, United States Code, Section 3553(a), it is the  
4 judgment of the Court that the defendant, Larrien  
5 Brown-Austin, is hereby committed to the custody of the  
6 Bureau of Prisons for a term of 180 months.

7 Upon release from imprisonment, you shall be placed on  
8 supervised release for a term of life.

9 Within 72 hours of release from the custody of the  
10 Bureau of Prisons, you shall report in person to the United  
11 States Pretrial Services and Probation office in the  
12 sentencing district or in the district to which you are  
13 released.

14 Based upon a review of your financial condition as set  
15 forth in the presentence report, the Court finds that you do  
16 not have the ability to pay a fine, and the Court waives the  
17 fine in this case.

18 You must pay to the United States a special assessment  
19 of \$100, which is due immediately.

20 And the Court finds based upon the information already  
21 placed on the record in its own evaluation of same, given  
22 your age, your term of imprisonment of 15 years, the fact  
23 that you have 20 years thereafter to pay the assessment, and  
24 you should be able to find employment particularly since I'm  
25 going to request that mental health treatment, sex abuse

1 treatment, and RDAP programming or substance abuse  
2 treatment, that hopefully you will come out on the other end  
3 drug free and able to go forth and find and secure a job  
4 whereby you can make the payment associated with that  
5 assessment. But I am imposing that \$5,000 assessment.

6 Now, in terms of the restitution, I'm going to hold  
7 that issue in abeyance and allow the United States  
8 Attorney's Office to confer with victim SD to see if that  
9 victim would like to pursue the restitution, as she's  
10 requested by way of this letter, with additional proof and  
11 information to be supplied to the Court.

12 In terms of the agreed-upon restitution, I will make  
13 that part of the ultimate restitution order.

14 Would you agree with that, AUSA Skutnik?

15 MS. SKUTNIK: I'm okay with that, Judge.

16 THE COURT: And are you okay with that,  
17 Mr. DeVan?

18 MR. DEVAN: Yes, Judge.

19 THE COURT: So I certainly will order that  
20 restitution to both Victims 1 and 2 as agreed upon, and that  
21 would be joint and several with co-defendants Larry  
22 Brown-Austin and Shannon Marzano.

23 But the open issue is the additional restitution  
24 requested by Victim SD. All right?

25 So we'll see what is provided to us. Obviously that's

1 got to be done in 90 days and have a hearing, if that's  
2 requested, to evaluate that information.

3 MR. DEVAN: Will my client be held locally and  
4 be required to be at that hearing or --

5 THE COURT: I would believe that we could have  
6 him by Zoom. We would have to check with the facility where  
7 he's at.

8 MR. DEVAN: I'd prefer to have him move along  
9 into the Bureau of Prisons system and begin his sentence,  
10 Your Honor.

11 THE COURT: Now, we always are working with  
12 conducting Zoom hearings, you know, with individuals that  
13 are detained locally.

14 AUSA Skutnik, are you familiar with the Bureau of  
15 Prisons' ability to conduct hearings by Zoom?

16 MS. SKUTNIK: I have no personal experience  
17 with that. I can't imagine any reason why we couldn't. And  
18 we'll definitely look into that.

19 THE COURT: All right.

20 I agree with you. I think he should move along into  
21 the federal prison system, and we will work to have him or  
22 attempt to have him appear by Zoom for the hearing on the  
23 restitution. Of course that's going to be dependent, too,  
24 on what SD would like to do in terms of...

25 Now, if the time of 90 days comes and goes and we



1 haven't been notified of any additional information or  
2 request for hearing, then I'll just issue the restitution  
3 order consistent with what the parties have agreed to  
4 jointly and severally as to the co-defendants. All right?

5 But, otherwise, certainly your client needs to be  
6 present for that.

7 You would agree with that, AUSA Skutnik, that the  
8 defendant needs to be present for that restitution hearing?

9 MS. SKUTNIK: Yes.

10 THE COURT: So we'll make that happen one way  
11 or the other.

12 MR. DEVAN: Virtually or otherwise.

13 THE COURT: Yes. As long as he agrees to  
14 appear by video.

15 MR. DEVAN: He will.

16 THE COURT: All right. Now, while on  
17 supervision, you must comply with the mandatory and standard  
18 conditions that have been adopted by this court and set  
19 forth in Part D of the presentence investigation report, and  
20 you must also comply with the following additional  
21 conditions.

22 You must refrain from any unlawful use of a controlled  
23 substance and submit to one drug test within 15 days of  
24 release from imprisonment and to at least two periodic drug  
25 tests thereafter as determined by the Court.

1           You must participate in a sex offense-specific  
2           assessment.

3           You must provide the probation officer with access to  
4           any requested financial information and authorize the  
5           release of any financial information. The probation office  
6           may share financial information with the U.S. Attorney's  
7           Office.

8           You must not incur new credit charges or open  
9           additional lines of credit without the approval of the  
10          probation officer.

11          You shall participate in an approved program of  
12          substance abuse testing and/or outpatient or inpatient  
13          substance abuse treatment as directed by your supervising  
14          officer and abide by the rules of the treatment program.  
15          The probation officer will supervise your participation in  
16          the program to include provider, location, modality,  
17          duration, intensity, et cetera.

18          The defendant shall not obstruct or attempt to  
19          obstruct or tamper in any fashion with the efficiency and  
20          accuracy of any prohibited substance testing.

21          You must undergo a mental health evaluation and/or  
22          participate in a mental health treatment program and follow  
23          the rules and regulations of that program.

24          The probation officer, in consultation with the  
25          treatment provider, will supervise your participation in the

1 program to include provider, location, modality, duration,  
2 intensity, et cetera.

3 You must submit your person, property, house,  
4 residence, vehicle, papers, computers as defined in  
5 Title 18, United States Code, Section 1030(e)(1), other  
6 electronic communications or data storage devices or media  
7 or office to a search conducted by a United States Probation  
8 officer. Failure to submit to a search may be grounds for  
9 revocation of release.

10 You must warn any other occupants that the premises  
11 may be subject to searches pursuant to this condition.

12 The probation officer may conduct a search under this  
13 condition only when reasonable suspicion exists that you  
14 have violated a condition of supervision and that the areas  
15 to be searched contain evidence of this violation. Any  
16 search must be conducted at a reasonable time and in a  
17 reasonable manner.

18 You must apply all monies received from income tax  
19 refunds, lottery winnings, judgments, and/or any other  
20 anticipated or unexpected financial gains to the outstanding  
21 court ordered financial obligations.

22 Pursuant to Title 18, United States Code,  
23 Section 3583, you are required to register under the Sex  
24 Offender Registration and Notification Act, and you must  
25 comply with the requirements of that act as directed by the

1 United States Pretrial Services and Probation officer.

2 Pursuant to the Adam Walsh Child Protection Act of  
3 2006, you will keep the registration current in each  
4 jurisdiction in which you reside, are employed, or are a  
5 student. You must no later than three business days after  
6 each change in name, residence, employment, or student  
7 status appear in person in at least one jurisdiction in  
8 which you are registered and inform that jurisdiction of all  
9 changes in reporting information. Failure to do so may be a  
10 violation of your conditions of supervised release and may  
11 be a new federal offense punishable by up to ten years.

12 You must not communicate or otherwise interact in any  
13 way, shape, or form with Victim 1 and Victim 2, either  
14 directly or through anyone else.

15 You must not have direct contact with any child you  
16 know or reasonably should know to be under the age of 18,  
17 including any of your own children, without the permission  
18 of the probation officer. If you do have any direct contact  
19 with any child you know or reasonably should know to be  
20 under the age of 18, including your own children, without  
21 the permission of the probation officer, you must report  
22 this contact to the probation officer within 24 hours.

23 Direct contact includes written communication, in-person  
24 communication, or physical contact. Direct contact does not  
25 include incidental contact during ordinary daily activities

1 in public places.

2 You must submit to periodic polygraph testing at the  
3 direction of the probation officer as a means to ensure that  
4 you are in compliance with the requirements of your  
5 supervision or treatment program.

6 You must participate in a sex offense-specific  
7 treatment program and follow the rules and regulations of  
8 that program. The probation officer will supervise your  
9 participation in the program to include provider, location,  
10 modality, duration, intensity, et cetera.

11 You are prohibited from accessing any computer, online  
12 computer service, Internet service provider, bulletin board  
13 system, or any other public or private computer network or  
14 the service at any location, including employment or  
15 education, without prior written approval of the United  
16 States Pretrial Services and Probation officer or the Court.  
17 Any approval shall be subject to any conditions set by the  
18 United States Pretrial Services and Probation officer or the  
19 Court with respect to that approval.

20 The defendant shall consent to the United States  
21 Pretrial Services and Probation Office conducting periodic  
22 unannounced examinations of his computer systems, which may  
23 include retrieval and copying of all memory from  
24 hardware/software, and/or removal of such systems for the  
25 purpose of conducting a more thorough inspection, and will

1 consent to having installed on his computer at his expense  
2 any hardware/software to monitor his computer use or prevent  
3 access to particular materials.

4 The defendant hereby consents to periodic inspection  
5 of any such installed hardware/software to ensure it is  
6 functioning properly.

7 The defendant shall provide the United States Pretrial  
8 Services and Probation Office with accurate information  
9 about his entire computer system, hardware/software, all  
10 passwords used by him, and his Internet service providers.

11 You must allow the probation officer to install  
12 computer monitoring software on any computer, as that term  
13 is defined in Title 18, United States Code,  
14 Section 1030(e)(1), that you use.

15 You must not date or befriend anyone who has children  
16 under the age of 18 unless approved in advance by the  
17 probation officer.

18 You must not reside within 1,000 feet of a school or  
19 daycare center without the express written approval of the  
20 probation officer.

21 Now, in accordance with Mr. DeVan's request, the Court  
22 will make recommendations to the Bureau of Prison. And  
23 they're only recommendations. The ultimate decision making  
24 is up to the Bureau of Prisons. But I will make a  
25 recommendation that you be placed at Victorville Medium II

1       Institution; that you receive mental health treatment,  
2       sexual abuse treatment; that you be evaluated for  
3       eligibility for participation in the RDAP program and any  
4       other substance abuse treatment available at the facility.

5             I will also make the recommendation to the Bureau of  
6       Prisons that you receive credit for all time served relative  
7       to this matter.

8             And at this time I would like to advise you of your  
9       appellate rights before we address any other final matters.

10            Mr. Larrien Brown-Austin, you can appeal your  
11       conviction if you believe that your guilty plea was somehow  
12       unlawful or involuntary or if there is some other  
13       fundamental defect in the proceedings that was not waived by  
14       your guilty plea.

15            Under some circumstances a defendant also has the  
16       right to appeal the sentence. I'm not sure that these  
17       circumstances are present in this case, but, nonetheless,  
18       any notice of appeal must be filed within 14 days of the  
19       entry of judgment or within 14 days of the filing of a  
20       notice of appeal by the government. If requested, the clerk  
21       will prepare and file a notice of appeal on your behalf. If  
22       you cannot afford to pay the cost of an appeal or for  
23       appellate counsel, you have the right to apply for leave to  
24       appeal in forma pauperis, which means you can apply to have  
25       the Court waive the filing fee. On appeal you may also

1       apply for court-appointed counsel.

2               Are there any objections, AUSA Skutnik?

3                       MS. SKUTNIK: No objections, Your Honor.

4                       THE COURT: Thank you.

5               Any objections, Mr. DeVan?

6                       MR. DEVAN: Our only objection is to the  
7       imposition of the \$5,000 restitution order.

8                       THE COURT: You mean assessment?

9                       MR. DEVAN: Yes. Special assessment rather.  
10       I keep saying that.

11                      THE COURT: JVTA assessment.

12                      MR. DEVAN: But that may become moot depending  
13       on our hearing in the future. Just for the record I wanted  
14       to make my objection.

15                      THE COURT: Certainly. Thank you.

16               Now, are there any other matters that we need to  
17       address to resolve this case for now pending the restitution  
18       issue coming up for hearing perhaps if the victim, SD, is  
19       able to garner additional support?

20                      MS. SKUTNIK: Two things, Your Honor.

21                      First, the government would move to dismiss Counts 2  
22       and 3 of the indictment pursuant to the plea agreement.

23                      And second, Your Honor, the government would seek an  
24       order of destruction for items that were seized in  
25       connection with this case, which would include illegal



1       narcotics, drug paraphernalia, a Smith & Wesson firearm.  
2       There was \$450 in currency. And then during a second  
3       subsequent search warrant there were some documents that  
4       were seized from the bedroom of the defendant, paperwork,  
5       writings of his. We can file a motion with the Court for  
6       destruction. I wouldn't expect an objection to the  
7       destruction of that material, but I certainly can't speak  
8       for Mr. DeVan.

9                   THE COURT: Are you talking about the firearm  
10       as well and the cash or just --

11                   MS. SKUTNIK: The firearm as well.

12                   THE COURT: Destruction of the firearm and the  
13       cash? You said that there was 450 --

14                   MS. SKUTNIK: It was 450 -- I don't know what  
15       they do with the cash, maybe it goes toward the JVT, but  
16       certainly the illegal narcotics, the drug paraphernalia, the  
17       paperwork, there were two cell phones, and the firearm, and  
18       condoms.

19                   THE COURT: And what?

20                   MS. SKUTNIK: Condoms.

21                   THE COURT: So the only thing you're not sure  
22       about is the cash?

23                   MS. SKUTNIK: Well, in terms of --

24                   THE COURT: I wouldn't think that you would  
25       destroy the cash, would you?

1 MS. SKUTNIK: We did not file a forfeiture as  
2 part of the indictment, so I'm not sure that we have the  
3 ability to seize the currency, although I'm not sure that we  
4 know who that currency belongs to. But, for purposes of  
5 destruction, I'm going to take cash out of the equation, and  
6 I'm going to just talk about those other things that I  
7 enumerated.

8 THE COURT: All right. Mr. DeVan, your  
9 position with regard to that request for an order of  
10 destruction as to all of those items just identified by AUSA  
11 Skutnik with the exception of the cash?

12 MR. DEVAN: With the exception of the cash, we  
13 do not object to any of the destruction of the items that  
14 she has identified.

15 And I suggest that as to the cash, perhaps we can  
16 further discuss that, it may become an issue regarding our  
17 future hearing on restitution.

18 THE COURT: Again, though -- and I don't know  
19 what that discussion is going to entail, but I think you  
20 mentioned you're not sure who the cash belongs to, and it  
21 was found in the house, correct?

22 So that could be Shannon Marzano, that can be Larry  
23 Brown-Austin, that can be Larrien Brown-Austin, but you'll  
24 deal with that then, right?

25 MR. DEVAN: Yeah.

1                   THE COURT: So I will, in accordance with the  
2 government's motion, dismiss Counts 2 and 3 of the  
3 indictment consistent with the plea agreement as to Larrien  
4 Brown-Austin.

5                   And I will issue that order of destruction as to the  
6 items identified by AUSA Skutnik. Everything with the  
7 exception of the cash.

8                   And certainly the two of you are free to evaluate that  
9 issue for purposes of perhaps how that might be used going  
10 forward.

11                   MS. SKUTNIK: Thank you, Your Honor. I'll  
12 supply a list to your deputy.

13                   THE COURT: Yes. That would be great. Thank  
14 you very much.

15                   Anything else on behalf of the defendant?

16                   MR. DEVAN: Nothing further, Judge. Thank  
17 you.

18                   THE COURT: Thank you.

19                   When do you foresee having any information for the  
20 Court and Mr. DeVan about a future hearing within 90 days?

21                   MS. SKUTNIK: Your Honor, I will confer with  
22 the victim and her representatives and report back to  
23 Mr. DeVan and to the Court, perhaps in three to four weeks.

24                   THE COURT: That's fine. Just as long as we  
25 can get everything done within that 90-day window is fine.

1           And I just want you to understand, the victim as well,  
2           I understand that she has suffered harm, I understand that  
3           there are losses associated therewith, but these are legal  
4           issues that I have to address to make sure that if and when  
5           I impose that order of restitution, it's a valid one under  
6           the law.

7                       MR. DEVAN: Understood.

8                       THE COURT: Thank you, all.

9           And the defendant is remanded to the custody of the  
10          U.S. Marshal.

11                      (Proceedings concluded at 10:52 a.m.)

12  
13  
14                               **C E R T I F I C A T E**

15  
16           I certify that the foregoing is a correct transcript  
17          of the record of proceedings in the above-entitled matter  
18          prepared from my stenotype notes.

19                               /s/ Gregory S. Mizanin                      December 7, 2022  
20                               GREGORY S. MIZANIN, RDR, CRR                      DATE